THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION No. 6626 of 1999

17.2.2006

Between:

Rice Millers Association, A.P., rep. by its President.

…Petitioner

And

Government of India, rep. by its Under Secretary, Ministry of Food and Consumer Affairs & Others.

….Respondents.

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WRIT PETITION No. 6626 of 1999

ORDER : (Per the Hon'ble Sri Justice Bilal Nazki)

This petition has been filed by Rice Millers Association of Andhra Pradesh, through its President. It is submitted that under the provisions of the Control Orders issued in Essential Commodities Act, the members of the Petitioner-Association are obliged to deliver levy rice to the State Government under instructions of the 2nd and 3rd respondents in order to cater to the requirements of the Public Distribution System. The levy rice is supplied at prices fixed by the 1st respondent. The 1st respondent notifies the price of rice for each Kharif Marketing Season. The said price will be taken into account for the incidence of tax as intimated by the 2nd respondent. Respondent No.3 fixes the total quantity of levy rice to be delivered by the members of the Petitioner-Association. For the Kharif Marketing Season 1997-98, G.O.Ms.No.566, dated 13.10.1997 was issued by the 3rd respondent, fixing the quantity of levy rice at 36 lakh tunns. By another G.O. being G.O.Ms.No.98, dated 14.10.1998, the quantity of levy rice was fixed at 40 lakh tunns for the year 1998-99.

The members of the Petitioner-Association have delivered the prescribed

levy of rice to respondent No.4 in B-Twill gunny bags. The 1st respondent notifies the price of the gunny bags, which will be taken into account while reimbursing the value thereof along with the price fixed for levy rice, which is contained in the gunny bags. The price of gunny bags notified by respondent No.1 varies.

According to the petitioners, the levies on the supply of rice as well as its container i.e. the gunny bag, are liable to be reimbursed to the members of the Petitioner-Association. The Petitioner-Association filed writ petition No.26491 of 1998 for a direction to the 1st respondent to disclose the components of price of levy rice. After filing of the said writ petition, respondent No.1 supplied the component of price of levy rice vide Annexure-E annexed to the petition. The element of Sales Tax for the year 1997-98 on the sale of rice as well as gunny bag price are not being reimbursed by the 4th respondent, therefore, the writ petitioners filed writ petition No.36272 of 1998, seeking a direction to the respondents to reimburse the element of Sales Tax payable by the members of the Petitioner-Association on the turnover relatable to rice and gunnies affected during the crop years 1994-95 to 1997-98. The writ petition was disposed of by the Court on 1.2.1999, directing the respondents to decide the application of the Petitioner-Association within three weeks. The Court also made it clear that if any adverse order is passed against the Petitioner-Association, it would be open for them to challenge the same. Pursuant to orders in W.P.No.36272 of 1998, respondent No.1 issued memo dated 19.3.1999 to the following effect –

> "Government after careful consideration of the matter and keeping in view the orders of the High Court in W.P.No.36272 of 1998 dated 1-2-1999 decided that the reimbursement of differential Sales Tax on rice i.e., Sales Tax on rice at 4% minus 4% purchase tax on paddy equivalent to value of 1 quintal of rice to be paid by the Food Corporation of India to the Rice Millers of A.P. for the crop year 1998-99 with effect from the date of issue of this order. It was also decided by the Government that the millers are not eligible for any differential Sales Tax for the years 1994-95 to 1997-98 as they never claimed it and it itself is proved positive of understanding between contracting parties. The concensus was only to pay the indicated price as specified in the levy orders of those years. Therefore, the request for payment of differential Sales Tax for the period from 1994-95 to 1997-98 is hereby rejected."

The grievance of the Petitioner-Association is that the Government has not taken any decision on the claim of the Petitioner-Association with regard to reimbursement of the tax on gunnies, which are used as containers for supply of levy rice. We have our own doubts whether this writ petition is maintainable at all, because, there is no factual basis laid in it, as it has been filed by an Association. Even by going through the counter-affidavits, one cannot come to any conclusion with respect to the controversies raised. The prayer made in the writ petition is that the Court should issue a writ of Mandamus declaring the action of respondents purporting to deny the differential Sales Tax on levy rice to the members of the Petitioner-Association for the period from 1994-95 to 1997-98 and from October 1998 to March 1999, as contained in Government Memo.No.645/CS-I(2)/99-1 dated 19-3-1999, is arbitrary and irrational.

We do not find anything wrong in this order, by which it is stated that Sales Tax on rice at 4% minus 4% purchase tax paid on paddy equivalent to value of one quintal of rice be paid by the Food Corporation of India to the Rice Millers of Andhra Pradesh for the crop year 1998-99 with effect from the date of issue of the order. The Government had also decided that the millers were not eligible for any differential Sales Tax for the years from 1994-95 to 1997-98, as they never claimed it and it also found that there was an understanding between the contracting parties that this amount shall not be reimbursed.

We have not been shown any material that this was claimed or that there was no contractual understanding between the parties that it shall not be paid. Therefore, the prayer with regard to the impugned Memo cannot be accepted. However, it is felt that the State Government has not taken any decision on the claim of the Petitioner-Association with regard to reimbursement of the tax on gunnies, which are used as containers for supply of levy rice.

Therefore, we allow this writ petition to the extent of giving a direction to the respondents to consider the claim of the Petitioner-Association for reimbursement of the tax on gunnies for the year 1998-99. No order as to costs.

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(BILAL NAZKI, J)

17th February 2006

(D.APPA RAO, J)

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